

1 DAVID R. EBERHART (S.B. #195474)
deberhart@omm.com
2 RYAN J. PADDEN (S.B. #204515)
rpadden@omm.com
3 DAVID J. SEPANIK (S.B. #221527)
dsepanik@omm.com
4 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
5 San Francisco, CA 94111
Telephone: (415) 984-8700
6 Facsimile: (415) 984-8701

Attorneys for Plaintiff
APPLE INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Case No. CV 11-01327 PJH

**DECLARATION OF DAVID R.
EBERHART IN SUPPORT OF APPLE
INC.'S MOTION FOR PRELIMINARY
INJUNCTION**

1 I, David R. Eberhart, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am a partner with the law firm of O'Melveny & Myers LLP, counsel of record
 3 for Plaintiff Apple Inc. ("Apple"). I submit this declaration in support of Apple's motion for
 4 preliminary injunction against Amazon.com, Inc. and Amazon Digital Services, Inc. (collectively
 5 "Amazon").

6 2. Apple's initial complaint was filed before Amazon launched its APPSTORE
 7 service on March 22, 2011.

8 3. On March 21, 2011, I placed a call to Dana Northcott, whom I understand to be
 9 Amazon's internal trademark counsel, to discuss Apple's recently filed complaint. The call was
 10 not answered and I left a voicemail inviting Ms. Northcott to return my call to discuss the case.

11 4. On March 22, 2011, I placed a call to Scott Hayden, whom I understand to be
 12 Amazon's Vice President of Intellectual Property and Associate General Counsel. The purpose
 13 of that call was to discuss Apple's recently filed complaint and the issues raised therein. The call
 14 was not answered, so I left a voicemail inviting Mr. Hayden to return my call.

15 5. On March 23, 2011, I received a voicemail from David Zapolsky, Amazon's
 16 internal counsel. Mr. Zapolsky indicated he did not have time to discuss our issues that day but
 17 proposed that we speak on Thursday, March 24. I emailed Mr. Zapolsky to inform him that I
 18 could be available to speak with him any time before 4:00 P.M. on Thursday, March 24.

19 6. On March 24, 2011, Mr. Zapolsky and I spoke briefly about the case and Apple's
 20 concerns with Amazon's use of the APPSTORE mark. To my knowledge, this was Amazon's
 21 first substantive response to Apple's complaints regarding use of the APPSTORE mark.

22 I declare under penalty of perjury of the laws of the United States that the foregoing is true
 23 and correct.

24 Date: April 13, 2011



25
26
27
28
David R. Eberhart